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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 269.

HIGINIO ROMEU, APPELLANT,

vs.

ROBERT H. TODD.

BRIEF AND ARGUMENT FOR APPELLANT.

FREDERICK L. CORNWELL,
Counsel for Appellant.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 23983

(20,219)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 269.

HIGINIO ROMEU, APPELLANT,

vs.

ROBERT H. TODD, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

BRIEF AND ARGUMENT FOR APPELLANT.

Statement of the Case.

This was a suit in equity brought by Higinio Romeu, a citizen of Porto Rico and a resident of Mayaguez, P. R., complainant, in the district court of the United States for Porto Rico, against Robert H. Todd, a citizen of the United States and a resident of San Juan, P. R., defendant, to remove a cloud on complainant's title to certain real estate, described in the bill of complaint filed therein, and praying that a temporary injunction be issued, to be made perpetual upon final hearing.

The facts as they appear from the pleadings may be summarized as follows: The defendant Robert H. Todd, on the

2d day of April, A. D. 1900, obtained a judgment in the United States Provisional Court for Porto Rico for the sum of $2,946.05 against Pedro Agostini and Juan Agostini, and under said judgment execution was duly issued and returned by the marshal *"nulla bona."* Thereafter, upon the 9th day of December, A. D. 1901, Robert H. Todd filed a creditor's bill upon the equity side of the district court of the United States for Porto Rico, which court had, by act of Congress, taken the place of the United States Provisional Court for Porto Rico, against Pedro Agostini, Juan Agostini, and Ana Merle to subject certain properties, held in the name of Ana Merle, for the use and benefit of Pedro Agostini. Among the several properties so held by Ana Merle, was one consisting of a rural tract of land comprising 21 cuerdas (acres), equivalent to 8 hectares, 25 areas, and 39 centiareas, located in the ward of "Ceballos," municipal district of Mayaguez, bounded on the north, south, east, and west by lands formerly owned by Isabel Valentina Merle, and improved with a wooden dwelling house. On the 18th day of December, A. D. 1903, the said district court of the United States for Porto Rico rendered its decree in said suit, adjudging and decreeing that the aforesaid tract of land specifically described, and which is the subject-matter of this suit, was purchased by Ana Merle with funds belonging to Pedro Agostini, and that said Pedro Agostini was the owner of the equitable and beneficial title of same, and further adjudged and decreed that the said tract of land, with all improvements thereon, be sold at public auction upon the 30th day of April, A. D. 1904, and by same decree appointed William Falbe special master to make such sale. Upon the 21st day of May, A. D. 1903, while the said suit was pending in the district court of the United States for Porto Rico, between Robert H. Todd, complainant, and Pedro Agostini, Juan Agostini, and Ana Merle, but before any decree was made and entered, the appellant, Higinio Romeu, purchased from Ana Merle the said tract of land of 21 cuerdas for the

sum of $1,200. The purchase was only made, however, after the appellant had employed competent counsel to examine the title to said land, and after counsel had made a thorough examination of the records in the office of the registrar of property at Mayaguez, in which office the title to said land was inscribed, and had reported that the title to same was absolute in Ana Merle, and that there were no liens or incumbrances on same of any kind whatsoever. The purchase of the land by the appellant was made in absolute good faith, for a good and valuable consideration, without notice of any kind of the pendency of the suit in the district court of the United States for Porto Rico, in which Ana Merle was a defendant, and his title was registered in the registry at Mayaguez on June 1st, 1903. In the records at the registrar's office, in the city of Mayaguez, in which district the land was located, the property appeared registered in the name of Ana Merle, absolutely, without any liens or conditions. There was no cautionary notice of the pendency of the suit or any *lis pendens* filed with the registrar of property or with anyone else. The appellant, after purchasing the property, which was in an abandoned condition, tore down the house thereon and constructed a new one, at a cost of $2,000, cleared the land and planted the same in coffee, oranges, and other fruits at an expense exceeding $1,000. This suit, which is now before this court on appeal, was filed by Higinio Romeu, complainant, upon the 23d day of April, A. D. 1904, in the district court of the United States for Porto Rico, against Robert H. Todd, defendant, praying for a temporary injunction, to be made perpetual upon final hearing, to prevent the sale of the said property on the 30th day of April, 1904, as was ordered in the decree rendered on the 18th day of December, 1903, to enjoin the defendant from claiming any title or interest in said land, and to remove the cloud from complainant's title (Rec., pp. 1 to 4). Upon the 29th day of April, 1904, a temporary restraining order was granted by the court, restraining the sale of the land on the 30th day of April, 1904, as had been

theretofore decreed, until further order (Rec., p. 5). Upon the 6th day of June, 1904, the defendant Todd filed a demurrer to the bill of complaint, alleging as grounds, that the bill of complaint did not state such facts as entitled complainant to relief in a court of equity, and that it appeared from the bill of complaint that the equitable doctrine of *lis pendens* was applicable, and that complainant, in law, had constructive notice of defendant's suit in equity at the time of his purchase (Rec., pp. 5 and 6). Upon the 2d day of June, 1905, the court, after hearing arguments of counsel, sustained the demurrer, and complainant refusing to plead, further ordered and decreed that the bill of complaint be dismissed and the temporary injunction be dissolved, from which order and decree appellant appealed.

ERRORS.

I. The court erred in sustaining the demurrer to the bill and dismissing the bill.

II. The court erred in dismissing the temporary injunction.

III. The court erred in sustaining the demurrer, in that the order or decree of the court is in direct contravention to the laws of Porto Rico, articles 433, 434, 435, 436, 446, 448, and 1295, Civil Code of Porto Rico, which was in effect at that time, and articles 2, 23, 34, 42, 43, 69, 281, and 283 of the Mortgage Law of Porto Rico, and articles 91 and 126 of the execution of the Mortgage Law of Porto Rico, which provide generally that the pendency of a suit does not constitute a lien on the property unless a notice of *lis pendens* is filed with the registrar of property in the district in which the property is located.

IV. The court erred in sustaining the demurrer, in that the order or decree of the court is in direct contravention

to section 8 of the organic act of Porto Rico, an act entitled "An act temporarily to provide revenue and civil government for Porto Rico, and for other purposes," passed by Congress of the United States and approved April 12th, 1900, providing that the laws of Porto Rico then in force shall continue in full force and effect in so far as they are not inconsistent or in conflict with the statutory laws of the United States not locally inapplicable.

V. The court erred in sustaining the demurrer, in that the order or decree is in direct contravention of the laws of the United States.

ARGUMENT.

I.

Under the laws of Porto Rico a conveyance of real property can neither be attacked nor rescinded where such property is legally in the hands of a third party who has not acted in bad faith.

It is provided by the Statutes of Porto Rico, that:

"Rescission obliges the return of the things which were the object of the contract, with their fruits and the sum with interest; therefore it can only be carried into effect when the person who may have claimed it can return that which, on his part, he is bound to do.

"Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who have not acted in bad faith" (Civil Code, Rev. Stat., 1902, section 1262).

And it is further provided, that:

"A *bona fide* possessor is deemed to be a person who is not aware that there exists in his title or the manner of

acquiring it, any flaw invalidating the same" (Civil Code, Rev. Stat., ed. 1902, sec. 436).

The appellant purchased the land in question after making due and diligent inquiry in the proper office as to the conditions of the title thereto, acquiring the title and possession thereof in good faith and in a legal manner, fraud, cheat, or deceit being absent from the transaction, he having no knowledge of any flaw in his title, and recorded the same according to law. His title and possession are then unassailable.

"Suits for rescission or determination of title shall not be instituted against third persons who have recorded the instruments of their respective interests in conformity with the provisions of this law" (Mortgage Law, sec. 36).

As showing with how much favor the law looks upon possession, once it is acquired, the following sections may be quoted:

"Good faith is always presumed, and any person averring bad faith on the part of the possessor is bound to prove the same" (Civil Code, Rev. Stat., ed. 1902, sec. 437).

"The possessor who believes himself owner has in his favor the legal presumption that he possesses under a just title, and he cannot be compelled to show the same" (Civil Code, Rev. Stat., ed. 1902, sec. 450).

It is evident that under these provisions the title of the appellant is unassailable, there being no inscription of the *lis pendens* and he being a purchaser in good faith.

II.

In Porto Rico the registry of the property is the only office for the information of prospective purchasers of land as to conditions of title thereto, and one who purchases land in litigation from one of the parties to the suit acquires a good title if upon due search being made in said registry nothing is found that will affect the title to be acquired.

The mortgage law, which is the substantive law of real property, in force in the island, is clear as to what shall be entered or recorded in the registries created and established by it, and its provisions are controlling in this case.

"Cautionary notices of their respective interests in the corresponding public registries may be demanded by:

"1. The person who enters suit for the ownership of real property, or for the creation, declaration, modification, or extinction of any property right" (Mortgage Law, article 42).

"The person who brings the action for ownership in case No. 1 of article 42 of the law may at the same time or subsequently request that a cautionary notice thereof be made, offering to indemnify any damages which may be caused the defendant thereby, should he win the suit."

Execution of the Mortgage Law, article 91.

In commenting upon the meaning and scope of section 42 (*supra*) a Spanish author, in his standard work, expresses himself as follows:

"No. 1 of article 42 limits the right to demand a cautionary notice to him who sues for the ownership of real property, or the creation, declaration, modification or extinction of any property right; but the case of a suit for the ownership of an interest in real estate (derecho real) is not covered thereby. And as by No. 1 of Article 2 (to which article 42 is correlative), titles transferring the ownership

of interests in real estate (derechos reales) are expressly declared to be inscribable, it seems that express mention should have been made in No. 1 of article 42 of the right to obtain a cautionary notice of the complaint in a suit for the ownership of any interest in real estate (derecho real). See decision of October 12, 1875 (Supreme Court of Spain).

"At any rate, even though there is such an omission in the letter of No. 1 of article 42, there can be no doubt that *it would be contrary to its spirit to deny said cautionary notice, it having been so declared on April 13th,* 1868" (Decision Supreme Court of Spain).

And the same author says further that:

"It is true that the cautionary notice does not prevent the alienation or incumbrance of the properties which are recorded in the defendant's name; it is true that it does not prejudge the outcome of the suit; but the circumstance that a cautionary notice of a complaint in a suit over a property has been entered, may influence one who might desire to contract regarding it."

Galindo & Escosura, Commentaries on the Mortgage Legislation of Spain, vol. 2, pp. 426-7.

In the report of the Spanish Code Commission, in the statement of motives and grounds for the Mortgage Law, the following statement is found:—

"As the judicial mortgage" (former name for cautionary notice) "does not spring from the will of the owner of the thing mortgaged, the power of private persons to demand, and of judges to grant it must be restricted. The restraint upon the right to property can be justified only when it has for its object the protection of other rights none the less to be protected, or the taking of necessary precautions to prevent the debtor or litigant from making impossible the enforcement of an executory judgment, when the day comes. * * *"

See Galindo & Escosura, Commentaries on the Mortgage Legislation of Spain, vol. 1, p. 102.

Under these provisions, if the defendant below wanted his suit to operate as a lien upon the property, and as notice to

the world of the pendency of said suit, it was his duty to have entered on the books of the proper registry a cautionary notice thereof, first obtaining a proper order to that effect from the court where the suit was brought (Mortgage Law, article 43; execution of the Mortgage Law, article 126, subd. 2), and having failed to do so he is not protected as against third persons purchasing where the vendor had duly recorded his title, and "according to the registry was competent to convey" (Mortgage Law, article 69). His suit was one to subject the property in question to the satisfaction of a judgment, and this would clearly have but one result, *i. e.*, the "extinction of a property right," thus coming within the scope of the provisions contained in the articles under discussion.

The appellant had a perfect right, according to the local laws, to rely upon his search in the registry for ascertaining the conditions of the title to the property which was about to be conveyed to him; and finding that there was nothing in the books showing that there was any action or suit of any kind pending with regard to the land, he acquired a good title when he purchased, and registered the conveyance to him, thus complying with the requisites of the Mortgage Law.

Whatever should be recorded and is not recorded or inscribed has no effect at all as against third persons. The law provides:

"In the registries mentioned in the preceding article shall be recorded:

"1. Instruments transferring or declaring ownership of realty, or of property rights thereto.

"2. Instruments by which rights of use, use and occupancy, emphyteusis, mortgage, annuity (censo), servitudes, and any others by which estates are created, acknowledged, modified, or extinguished."

* * * * * * *

Mortgage Law, article 2.

"The instruments mentioned in articles 2 and 5 which are not duly recorded or entered in the registry cannot prejudice third persons."

* * * * * * *

Mortgage Law, article 23.

Galindo & Escosura, in their Commentaries on the Mortgage Law, have remarked the following about this section:

"Section 23 is so important that the minister of grace, and justice, when sending in his report on mortgage legislation, said that if the law was analyzed, if it was condensed, *this section in itself would be the law*" (See Galindo & Escosura, Commentaries on the Mortgage Legislation of Spain, vol. 2, p. 272).

The attention of the court may be still further called to article 283 of the Mortgage Law, whereby the fact that real property or property rights are encumbered can only be proven to the prejudice of third persons by certificates issued by the registrar describing the conditions of a particular property as it may appear from the books in the registry. To issue these certificates there must have been made in the books of the registry the entries or records to which they are to refer, and a third person who buys property, relying upon certificates or searches made which reveal the nonexistence of liens or encumbrances on it, if he has ascertained that there is nothing on record that would affect the title to said property, cannot be charged afterward with notice of the pendency of a suit of which nothing appears on the books where he is directed by law to search and to rely upon that search for his protection; and if an action or suit is brought, the subject-matter of which is real property, and no cautionary notice of it is entered on the books of the proper registry, a third person buying that property cannot be charged with notice thereof, even though he buys during the pendency of the litigation. The party failing to enter

the cautionary notice alone should suffer for the consequences of his own negligence.

As still further showing the importance and necessity for registration and inscription under this system, a discussion of the following sections of the Mortgage Law may be useful:

Section 34 provides:

"* * * the instruments or contracts executed or covenanted by a person who, *according to the registry,* has a right thereto, shall not be invalidated with regards to third persons, *after they have once been recorded,* although later the right of the person executing them is annulled or determined by virtue of a prior deed not recorded, or for reasons which do not clearly appear from the registry."

Commenting upon this section, Galindo & Escosura have said:

"* * * even though it may seem harsh and unequitable that a formality such as inscription, may give or take away rights, it is yet necessary to acknowledge that no other thing was possible within the system of public registration."

Galindo & Escosura, Comm. on the Mortgage Legislation of Spain, vol. 2, p. 361.

Under this provision it is only in the registry where prospective purchasers may learn whether their vendors have a "right" to convey, or, in other words, to execute or covenant the conveyance, and the record is made the safeguard of buyers. So that if A wants to buy B's land, and he does so after ascertaining from the registry that B has a right to execute or covenant the conveyance, he will get a good title, and, upon registering the same, it will become perfect and unassailable. It is for some purpose that registries are made public, and that parties are not held bound to take notice of whatever does not appear in the books kept in those offices, and that purpose is to protect those who, taking advantage of the provisions of the law, deal with property, relying upon what the proper registry shows to be its condition, and to

secure good titles to those who register them according to law.

Under the local system of registration even prescription must be recorded in order that it may ripen into a good title. The law holds so clearly:

"A prescription which does not require a just title" (a title sufficient in law to transfer dominion or property right) "shall not prejudice third persons, if its possessory title is not recorded.

"Neither shall a third person be prejudiced by prescription which requires a just title if the latter is not recorded."

* * * * * * *

Mortgage Law, article 35.

As it has been rightly said Galindo & Escosura, "* * * there is no true property right with all the rights flowing from it, unless the same is recorded."

There can be no question as to whether the Mortgage Law is in force in Porto Rico. It is expressly provided by the Civil Code, in its chapter relative to mortgages, that:

"Besides the requisites mentioned in section 1758 it is indispensable, in order that the mortgage may be validly constituted, that the instrument in which it is created be entered in the registry of property" (Civil Code, Rev. Stat., ed. 1902, Chap. III, sec. 1776).

And the same code further provides:

"The form, extension, and effect of the mortgage, as well as that relating to its creation, modification and extinction, and all that which may not have been included in this chapter, *shall be subject to the provisions of the Mortgage Law, which continues in force.* (*Id., id.,* sec. 1781.)

III.

The equitable doctrine of lis pendens being inapplicable to the case at bar, the United States district court should have decided as the insular court would do in the premises.

The doctrine of *lis pendens,* as it is known to the American jurisprudence and is applied by the federal courts, cannot operate as against the appellant. The jurisprudence of Porto Rico differs widely from that of the States of the Union in many vital respects, and it is peculiar to the Spanish system still largely in force in the island. Under the Spanish law *lis pendens* is not recognized as having the same scope and latitude as it has in American equity jurisprudence, but it is limited by the recording act which forms part of the Mortgage Law; and according to the provisions of this law and the authorities thereon one bringing a suit, whether in what would be known to us as equity or at law, the object of which is to subject property of the defendant to the satisfaction of a judgment, or in any other manner affect his property, must enter a cautionary notice of the complaint or attachment, if any, in the proper registry, in order that it may operate as notice as against third persons who may deal with the property the object of the suit, and thus bind them to the outcome and consequences of the litigation.

In Smith *vs.* Gale, a case decided by this court in 1891, a person purchased real estate in litigation from the party in possession in good faith and without notice of the pendency of the litigation. The court held that such party might acquire a good title as against the other party if no *lis pendens* have been filed, the court speaking as follows:

"In order to charge purchasers of property with notice of pendency of suit, it is necessary, under the statutes of Dakota, to file *lis pendens* with the registry of deeds of the county in which the land is situated, containing the names

of the parties, the object of the action, and a description of the property. There appears to have been no *lis pendens* filed in this case, and hence no constructive notice of suit, as the court finds that Mrs. McKennan was an innocent purchaser of the property for a valuable consideration, and had no notice or knowledge of the pendency of the action, and as there is no evidence to contradict this, we know of no reason why she or Grigsby should not be held to have acquired a good title to the property, *although purchased during the pendency of this litigation*" (144 U. S., 509).

It is well established that the federal courts are bound to decide precisely as the State courts ought to do, where their decision will affect titles to real property. Numerous authorities might be cited in which this rule is laid down and followed, but we shall content ourselves with referring to the following only:

Hinde *vs.* Vattier, 5 Pet., 398; 8:170.
Union Pacific Ry. Co. *vs.* Reed, 80 ed. Rep., 234–9.
Hoge *vs.* Magnes, 85 Fed. Rep., 355–7.

In Hinde *vs.* Vattier (*supra*) the rule laid down by the court and which has been repeatedly followed is that—

"There is no principle better established and more uniformly adhered to than that the circuit courts in deciding on titles to real property in the different states, are bound to decide precisely as the state courts ought to do. *The rules of property* and of evidence, whether derived from the laws and adjudications of the judicial tribunals of a state, furnish the guides and rules of decision in those of the union in all cases to which they apply, where the Constitution, treaties or statutes of the United States do not otherwise provide."

The United States courts also follow the decisions of the highest court of a State where they settle rules of law relating to real property.

Myers *vs.* Reed, 17 Fed. Rep., 404.
O'Connell *vs.* Reed, 5 C. C. A., 586.
Belding *vs.* Hebard, 43 C. C. A., 296-308.

The provision of the statutes of the United States on this subject is substantially and in effect that, excepting matters of procedure in equity and maritime law, *the United States courts are bound by and shall apply local laws.*

U. S. Rev. Stat., tit. XIII, ch. XVIII, sec. 913, p. 174.

There can be no doubt as to the correctness of the proposition that the court below should have followed the local laws and applied the same under the rules quoted from Smith *vs.* Gale and Hinde *vs.* Vattier and the statutory provision referred to.

The judgment of the insular courts would have been for the appellant, had this case come up before them, and for him should have been the decree of the United States court.

The Supreme Court of Porto Rico has held that where one obtained a judgment in the United States Provisional Court, and by reason thereof a levy or attachment was made upon property of the defendant, which was subsequently sold, *without having entered a cautionary notice* of the levy or attachment, but the purchaser registering his title under the sale, one, who suing in the insular courts obtains a judgment and attachment on the same property against the same defendant, *and enters a cautionary notice thereof,* will not be prevented from going on with his suit until execution of the judgment and sale of the property thereunder, and where a district court makes an order to the contrary it will be reversed.

See the decision of the Supreme Court of Porto Rico of November 25th, 1903.

In this case the party who sued in the United States Provisional Court filed no cautionary notice thereof, but only registered his title under the sale in the said court, and the party suing in the insular court registered his cautionary notice upon bringing suit and before the title of the purchaser in the United States court was registered. Under

the decision one purchasing from the plaintiff in the suit brought in the insular court would take subject to that suit, but not subject to that brought in the United States court, *as no cautionary notice* of the latter *was entered* in the registry as required by the Mortgage Law.

The sections of the Mortgage Law which have been discussed are part of the substantive law of Porto Rico. They grant a right of which a party may take advantage or not as he sees fit. That right is the entering of a cautionary notice, the consequence of which is the subjection of property to a lien in favor of the party exercising it, and the notification to the world that such burden has been imposed upon that property, and that those dealing with it do so at their peril.

The Civil Code of Porto Rico provides that:

"The form, extension and effects of the mortgage, as well as that relating to its creation, modification and extinction, and all that which may not have been included in this chapter, *shall be subject to the provisions of the Mortgage Law*, which continues in force."

Civil Code, Rev. Stat., ed. 1902, sec. 1781.

It is unquestionably true that the fact that this provision regarding the Mortgage Law is found in the Civil Code shows in a conclusive manner that it is part of the substantive law, and was thus considered by the codifiers and revisers of the local statutes. And even the United States district court for Porto Rico recognized this fact when it adopted its rules in the year 1904, and from which we shall quote the following:

"RULE 22. The clerk of this court shall issue all preventive annotations (anotaciones preventivas)"—the term used in the translation of the law is "cautionary notices"—"which by the mortgage or other law of Porto Rico may be necessary or required to be filed in the registry of property for the purpose of obtaining a *lis pendens* or any other right or benefit accorded to a party by the laws of Porto Rico against another party or his property situated in Porto Rico

by reason of the institution or pendency of a suit or other proceedings."

The provisions of the Mortgage Law hereinbefore cited constitute a rule of property. They affect the title to and possession of real property and are applicable to titles, and therefore they are binding upon the courts, federal as well as insular.

A rule of property "is a settled legal principle governing the devolution and ownership of property."

24 Am. and Eng. Encyc. of Law, 1011.

"The decisions of the highest court of a State may be said to constitute a rule of property when they relate to and settle some principle of local law directly applicable to titles."

Edwards *vs.* Davenport, 20 Fed. Rep., 756-63.

"The term rule of property means those rules governing the descent, transfer or sale of property, and the rules which affect the title and possession thereto."

Bucher *vs.* Cheshire R. Co., 125 U. S., 555.

The United States Supreme Court, in a case arising under the registration laws of Louisiana, in passing upon the questions that failure to reinscribe a mortgage freed the land conveyed from a mortgage lien, because the mortgagor was chargeable with notice by the *pact de non aliendo* in the mortgage, and because the mortgagee being a minor, his mortgage did not require reinscription to preserve its lien, says:

"These questions have been settled against the appellant by the supreme court of Louisiana.

"That court has decided that under *the positive law of Louisiana as contained in the codes and statutes, nothing supplies the place of registry* nor dispenses with it, so far as those are concerned who are not parties to the mortgage, and that when ten years have elapsed from the date of inscription without reinscription, the mortgage is without effect as

to all persons whomsoever who are not parties to the mortgage.

"In the case of Watson *vs.* Bondurant, 30 La. Ann., 1, the same court held that no mortgage has any effect as to third persons unless recorded; and, save in the single case of a minor's mortgage on the property of his tutor, every mortgage ceases to have effect, except as to the parties to it, unless reinscribed within ten years from the date of its original inscription, and that neither the existence of the *pact de non aliendo* in a mortgage, *nor the pendency of a suit to foreclose the same, obviates the necessity of its inscription or reinscription.*

* * * * * * *

"The decisions above cited, *establishing as they do a rule of real property* in the State of Louisiana, *are binding on this court and are conclusive of this case.*"

Bondurant *vs.* Watson, 103 U. S., 281.

So far as we have been able to ascertain this decision stands today as the law, and the great similarity of the statutory provisions therein passed upon with those now before the court makes of this case one of much weight. Under the laws of Louisiana, as they existed at the time this decision was rendered (1880), the validity of a mortgage depended upon its registration; under the laws of Porto Rico the registration of a complaint in a suit over real estate is the only means to secure a lien as against third persons and to charge the world with notice thereof. In both cases a right is accorded, and registration or inscription is required to secure its advantage. If the provisions of the statutes of Louisiana are a rule of property those of the Mortgage Law of Porto Rico are equally so, since both apply to titles thereto, and the United States district court is bound to follow the latter, whether in cases arising in equity or at law.

In a case which arose in South Carolina, under the provisions of the Code of Civil Procedure of that State relating to the filing of *lis pendens* and its effects, the circuit court of appeals of the United States for the circuit, when passing

upon the allegations of the petition which related to the filing of the notice of *lis pendens,* said:

"The allegations of the petition relating to the notice of *lis pendens* have even less merit, if that be possible, than those relating to tenancy. Under section 153 of the Code of Civil Procedure of South Carolina, it is only *a subsequent purchaser or encumbrancer who is protected by the failure to file the notice of lis pendens.* The petitioner is neither, nor is the party for whom he pleads, under whose authority he claims his tenancy exists."

Vance *vs.* Wesley, 85 Fed. Rep., 157-61.

This rule, that where the local laws of a state constitute a rule of property the federal courts are bound to apply them, has been carried so far as to cover registration statutes of a State as to the competency as evidence of the records of deeds (Union Pac. Ry. Co. *vs.* Reed, 80 Fed. Rep., 234); and it has been also extended to a right of redemption after a sale on foreclosure of mortgage, given by a State statute to the mortgagor, and after him to his judgment creditor (Brine *vs.* Ins. Co., 96 U. S., 627; Ins. Co. *vs.* Cushman, 108 U. S., 51).

If the rule has been extended so as to cover these cases, it should be equally extended to cover the case at bar.

The authorities herein discussed and referred to sufficiently support the conclusion that the order and decree entered by the court below sustaining the demurrer filed by the defendant should be reversed.

All of which is respectfully submitted.

FREDERICK L. CORNWELL,
Counsel for Appellant.